

GARY K. NELSON, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

June 5, 1973

DEPARTMENT OF LAW LETTER OPINION NO. 73-20-L (R-31)

REQUESTED BY: THE HONORABLE DOUGLAS S. HOLSCLAW
Arizona State Senator

QUESTION: May Arizona's Legislature provide criminal penalties for the violation of rules and regulations to be enacted by an administrative agency?

ANSWER: Yes.

In 1970, Arizona's Court of Appeals in State v. Phelps, 12 Ariz.App. 83, 467 P.2d 923, held that criminal penalties may be provided by the Legislature for violation of rules and regulations of an administrative agency. The court indicated further, however, that: (1) the delegation of rule-making authority, where a criminal statute is being construed, must be definite and certain; and (2) the line between what is a constitutional and what is an unconstitutional delegation of authority and power must be determined on a case to case basis.

In State v. Phelps, supra, Phelps was charged with the act of wilfully refusing to admit a Maricopa County Health Department inspector into the premises for the purpose of making an inspection, which act constituted a violation of a regulation of the Maricopa County Health Code.

In determining that the delegation of authority to the Maricopa County Health Department was sufficient and definite enough to allow a violation of its rules and regulations to be a crime under the state statute, the court held that a reading of the particular statute (the pertinent portion of which reads as follows) would indicate to a person that he is subject to reasonable inspection, and that his failure to allow such inspection would be a violation. A.R.S. § 36-105.B.4 states: ". . . The regulations shall provide for the inspection and licensing of premises. . . ."

In our opinion, legislation enacted by following substantially the guidelines provided by the Phelps decision, supra, would withstand a constitutional attack.

Respectfully submitted,

GARY K. NELSON
The Attorney General

GKN:AWB:ell